IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6219 OF 1995

1. G.MURTAZA FAQUIH, SECRETARY,
   KONKAN MUSLIM EDUCATION SOCIETY
   OF THANE DISTRICT, SOUDAGAR MOHALLA,
   BHIWANDI.
2. THE HEAD MASTER, S.H.A.RAIS HIGH
   SCHOOL (MANAGED BY KONKAN MUSLIM
   EDUCATION SOCIETY OF THANE DISTRICT
   OL THANE ROAD,BHIWANDI. ...PETITIONERS.

VS.

1. MANSOOR AHMED MAQBOOL AHMAD
   C.O.MUNISHI SETH,429,VAITAPADA,
   NAGAON ROAD, BHIWANDI.
2. THE PRESIDING OFFICER,
   SCHOOL TRIBUNAL, NASIK DIVISION,
   NASIK ...RESPONDENTS.

MR. ASHUTOSH GOLE I/B. R.S.APTE FOR THE PETITIONERS.

MR. A.N.MANIYAR, ADVOCATRE FOR RESPONDENT NO.1.

CORAM : A.P. DESHPANDE, J.

DATE : January 12, 2007.

JUDGMENT

1. The Petitioner G. Murtaza Faquih is the Secretary of Konkan Muslim Education Society, which administers school by name S.H.A. Rais High School. The Petitioner appointed the Respondent No.1 as an assistant teacher on 30.8.1982. At the time of initial appointment, the educational qualification of Respondent No.1 was "Fazil" of Al Jamitul Islamia, Darul Uloom, Deoband, a college run in U.P. As per the circular issued by the Government of Maharashtra, Education Department, dated 7.10.1973, qualification of "Fazil" was treated equivalent with the Degree of Bachelor of Arts (B.A.) and thus treated as graduate in the subject of Arabic language. The appointment of the Respondent NO. 1 was granted approval by the Education Officer. The Petitioner terminated the services of the respondent No.1 by an order, dated 25.3.1994. The reason set out in the termination order is that the respondent No.1 failed to acquire teaching/training qualification, which is the prescribed eligibility criteria for appointment of a graduate teacher. The other ground set out in the termination Order is to the effect that the institution had decided to close down the Arabic language course and further decided to adopt

a composite course of Marathi and Hindi. The second ground about the intention of the petitioner to close down the Arabic course has no relevance to adjudicate the question involved in this petition.

2. Being aggrieved by the Order of termination, issued by the Petitioner, the Respondent No.1 preferred an Appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, before the School Tribunal and questioned the legality and validity of the termination.

3. Before the School Tribunal, it was an admitted position and the Tribunal has so recorded a finding that the Respondent No.1 herein was possessing qualification of Fazil, which has been treated equivalent with B.A. Degree and the Respondent No.1 did not possess teaching/ training/ professional qualification, as prescribed for a trained graduate teacher, under the provisions of the Act and the Rules. Though, the Tribunal concluded that the Respondent No.1 herein did not have teaching / training qualification, as prescribed under the Rules being an eligibility criteria, the Tribunal proceeded to record finding that as the Education Officer has granted approval to the appointment of the Respondent No.1 herein, at a later

point of time, belatedly the service of the Respondent NO.1 cannot be terminated. To put in other words, the Tribunal finds that the Management would be estopped from terminating the service of the untrained teacher, if he has been granted approval by the Education

Officer. Proceeding on these lines, the appeal has been allowed by the Tribunal, which order is challenged in the present writ petition.

4. The learned Counsel for the Petitioner has invited my attention, firstly to Section 5 of the Act, which cast an obligation on the Management to fill in permanent vacancy by appointing a person, duly qualified. The learned Counsel has then invited my attention to Rule 6 of the M.E.P.S.Rules, which lay down that the minimum qualification for the post of teaching staff shall be as specified in Schedule "B". Turning to Schedule "B" (II), lays down qualification for the trained teachers in Secondary Schools. For graduate teachers, training/teaching qualifications are laid down whereas for language teachers, qualifications are prescribed in clause (5) of the Schedule B-II Act. Clause (i) provides for graduate teachers, the Training qualification viz. any other degree, diploma, or certificate which government or the Inter-University Board may sanction as equivalent to any of the above qualifications as referred to in item No. (1). It is

thus clear that the Respondent NO.1 herein does not possess the professional qualification. Meaning thereby, teaching/ training qualification, which is prescribed under Item No.1. It is reiterated that the Tribunal has rightly held that the Respondent NO.1 does not possess the teching/training/professional qualification, which is a must for appointment of a graduate teacher in a secondary school. The Tribunal recorded the finding that the respondent No.1, herein, is not a trained graduate teacher, eligible to be appointed as an assistant teacher in secondary school. The Tribunal has committed an error in holding that on account of grant of approval by the Education Officer, he is to be continued in service. Erroneously granting of an approval by the Education Officer cannot cloth an untrained teacher with status of a trained teacher. Such an approval can never operate against a statute. A wrong committed by the Education Officer cannot vest the Respondent No.1 herein with a legal right qua the post in question, as the respondent No.1 herein was not eligible for being appointed in the said post. An untrained teacher cannot be continued in service, just because the Education Officer has, wrongly granted the approval. It is evident from the impugned Order that at a latter point of time, the Education Department, namely, the Deputy Director of Education realised the

mistake in treating the qualification "Fazal" as a qualification equivalent to training qualification. Qualification of " Fazal" is only granted equivalence with BA Degree; whereas no such equivalence has been granted so far as training/ teaching/ professional qualification is concerned. Respondent No.1 herein had failed to acquire the teaching/ training/ professional qualification. Strangely enough, for a period of 10 to 12 years the respondent NO.1 did not acquire the training/ teaching/ professional qualification and hence, the petitioner was within its right to terminate the respondent NO.1 from service, as the respondent No.1 did not have any right to the post as trained eligible teacher. The Tribunal could not have granted the first respondent, relief of reinstatement by quashing the termination order. The impugned Order thus suffers from patent illegality and hence, the present writ petition deserves to be allowed.

. It may be stated at this place that while issuing the Rule, this Court had stayed the Order passed by the Tribunal and thus, the Respondent No.1 is not in employment of the Petitioner. A reply titled as written statement, is filed by the Respondent No.1 in this petition, wherein it is tried to be contended that the Respondent No.1 is a trained graduate teacher as he

has passed final year examination in Cardboard and Book Binding, in April, 1995, conducted by the Maharashtra State Board of Vocational Examination, Bombay. In the first place, the said qualification is acquired after termination and in the second place, acquiring qualification of Card Board and Book Binding from Vocational Board, does not satisfy the criteria laid down for a trained graduate i.e. language teacher. Hence, on this count also, the Respondent NO.1 cannot be treated as trained graduate teacher.

In the result, the writ petition is allowed. The impugned Order passed by the School Tribunal is hereby quashed and set aside.

Rule made absolute in above terms with no Order as to costs.

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[A.P.DESHPANDE, J.]